

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
International Travel Brokers, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ended 6/30/75 & 6/30/76. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon International Travel Brokers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

International Travel Brokers, Inc.
11 Grace Ave.
Great Neck, NY 10021

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of May, 1983.

David Parchuck

William P. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
International Travel Brokers, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ended 6/30/75 & 6/30/76. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon Irwin Sturz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irwin Sturz
Louis Sturz & Co.
9 East 40th Street
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
6th day of May, 1983.

David Parchuck

James A. Heald

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 6, 1983

International Travel Brokers, Inc.
11 Grace Ave.
Great Neck, NY 10021

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Irwin Sturz
Louis Sturz & Co.
9 East 40th Street
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
INTERNATIONAL TRAVEL BROKERS, INC.	:	DECISION
	:	
for Redetermination of Deficiencies or for	:	
Refunds of Corporation Franchise Tax under	:	
Articles 9-A and 27 of the Tax Law for the	:	
Fiscal Years Ending June 30, 1975 and June 30,	:	
1976.	:	

Petitioner, International Travel Brokers, Inc., 11 Grace Avenue, P.O. Box 806, Great Neck, New York 11021, filed petitions for redetermination of deficiencies or for refunds of corporation franchise tax under Articles 9-A and 27 of the Tax Law for the fiscal years ending June 30, 1975 and June 30, 1976 (File No. 31403).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 22, 1982 at 11:00 A.M. Petitioner appeared by Louis Sturz & Co. (Irwin Sturz, CPA). The Audit Division appeared by Paul B. Coburn, Esq., (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether a federal extension of the statute of limitations also extended the New York State Corporation Franchise Tax period of limitations for purposes of claims for refund.

II. Whether petitioner may change the allocation of its income for Corporation Franchise Tax purposes where a notice of deficiency is issued during the additional period of limitations created by reason of a federal tax change.

FINDINGS OF FACT

1. Petitioner filed Corporation Franchise Tax Reports for fiscal years ending June 30, 1975 and June 30, 1976, allocating 100 percent of its income to New York.
2. During 1979, it was determined by the State of Hawaii that petitioner was doing business in Hawaii as a 50 percent owner of a partnership. As a result, state corporate tax was paid to Hawaii for the years in issue.
3. In February, 1980, petitioner's federal corporation tax returns for fiscal years ending in 1975 and 1976 were examined by the Internal Revenue Service and an addition of \$42,282.43 was made to income for the fiscal year ending June 30, 1975 and an addition of \$14,634.41 was made to income for the fiscal year ending June 30, 1976.
4. Pursuant to the federal audit, petitioner signed federal consents fixing the period of limitation upon assessment of tax for the years in issue at December 31, 1980. Petitioner maintained that said consents likewise extended the New York period of limitation.
5. In February 1980, petitioner filed a claim for refund for each of the years in issue, claiming \$43,119.41 for the fiscal year ending June 30, 1975 and \$18,032.78 for the fiscal year ending June 30, 1976, on the ground that only 37.77 percent of its fiscal year 1975 income and 53.35 percent of its fiscal year 1976 income was allocable to New York. In preparing its claims for refund, petitioner increased its previously reported income by the additions to income determined by the federal tax examiner.
6. On August 15, 1980, the claims for refund were disallowed because they were not filed within three years of the time the tax was originally due. A Notice of Deficiency was issued on the same date for the period ending June 30,

1975 in the amount of \$3,805.42 plus interest of \$1,590.36 for a total of \$5,395.78. A Notice of Deficiency was also issued on the same date for the amount of \$1,756.13 plus interest of \$584.65 for a total of \$2,340.78. The amounts due were deducted from a refund due petitioner for the fiscal year ending June 30, 1977.

7. Petitioner maintains that it is entitled to the entire refund claimed because the federal consent extending the period of limitations to December 31, 1980 also applied to New York State. Alternatively, petitioner argues that the claimed allocation of income should, in any event, apply to the additional income determined by the federal tax examiner entitling petitioner to a refund of the tax based on the additional income not allocable to New York State.

CONCLUSIONS OF LAW

A. That section 1083(c)(2) of the Tax Law provides that the period of limitation for assessing taxes due may only be extended if both the New York State Tax Commission and the taxpayer have consented in writing. The federal agreement to extend the period of limitation of assessment is not binding on the New York State Tax Commission since it was not a party to said agreement. Therefore, petitioner is not entitled to a refund.

B. That section 1083(c)(3) of the Tax Law provides that if a corporate taxpayer files a report or an amended return, required with respect to an increase in federal taxable income or federal tax, an assessment may be made at any time within two years after such report or amended return was filed. Section 1083(c)(7) of the Tax Law provides that where an assessment is made or notice of deficiency is issued during the additional period of limitation provided for in section 1083(c)(3) by reason of a federal tax change, regardless of whether the change was reported by the taxpayer, no change in the allocation

of income or capital upon which the taxpayer's return was based may be made.

See Matter of The Standard Safe Deposit Company of New York, State Tax Commission, April 23, 1982.

C. That because petitioner allocated 100 percent of its income to New York State in its original tax reports for 1975 and 1976, it is precluded from changing the allocation of the additional income for those years subsequently determined by the Internal Revenue Service in 1980.

D. That the petition of International Travel Brokers, Inc. is denied and the notices of deficiency issued August 15, 1980 are sustained.

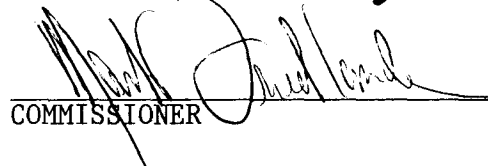
DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER